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August 3, 2009

EX PARTE PRESENTATION

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *Special Access Rates for Price Cap Local Exchange Carriers*, WC Docket. 05-25
National Broadband Plan for Our Future, GN Docket. 09-51

Dear Ms. Dortch:

This is to inform you that on August 3, 2009, Patrick Brogan and the undersigned, representing USTelecom, met with FCC Commissioner Copps' Legal Advisor Jennifer Schneider in connection with the proceedings above. In the meeting we discussed the attached presentations and USTelecom's report on High-Capacity Services, previously filed in this docket.

Pursuant to Section 1.1206(b) of the Commission's rules, a copy of this electronic notice is being filed in the above-referenced dockets. Please call me if you have any questions.

Sincerely,

Glenn T. Reynolds
Vice President, Policy

Attachment
cc: Jennifer Schneider

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We are Broadband.

High-Capacity Services: Abundant, Affordable, and Evolving

Patrick Brogan
Vice President for Industry Analysis, USTelecom

Evan Leo
Kellogg, Huber, Hansen, Todd, Evans & Figel, P.L.L.C.

July 2009

Introduction and Overview of USTelecom Report

- Why this report?
  - U.S. Government has made ubiquitous broadband deployment a national priority
  - Proponents of new special access price cuts piggy-backing on broadband policy interest
  - Policymakers need up-to-date factual record on competition, investment, and innovation
- Goals
  - Provide a snapshot of industry facts
  - Carefully document sources
  - Illustrate market dynamics
- Limitations
  - Publicly available and third party data are extensive…
    - Showing growing demand, competition, investment and innovation while prices continue to fall
  - …but not sufficient…
    - Most competitors have not supplied critical data on location of competitive facilities
  - Therefore, it is essential for the FCC to undertake comprehensive data collection from *all* sources of competitive supply, including self-supply

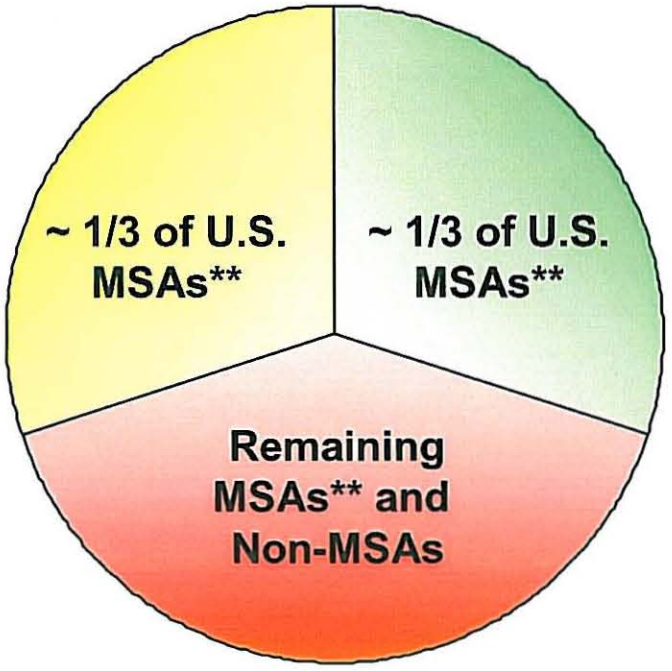
Special Access Regulation: All Prices Must Be "Just and Reasonable"

Title II of the Communications Act

"Just and Reasonable"

Phase 1 - Partial Pricing Flexibility*

Flexibility to lower rates through term/volume discounts



Phase 2 - Full Pricing Flexibility*

Flexibility to raise or lower rates subject to "just and reasonable" mandate

Price Cap or Rate of Return Regulated

Strict price controls

* Phased pricing flexibility based on competitive triggers. **Source is U.S. Government Accountability Office (GAO).

Intermodal Competition Has Changed the Game

Today the most significant form of new entry is from intermodal competitors such as cable operators and fixed wireless providers

- Wide-scale new entry is significant on several levels
  - Significant competitive market opportunity is inconsistent with claims of "market failure"
  - Static market share analyses are even less reliable
  - This is particularly true given the success of intermodal competition in the mass market
- Cable and fixed wireless providers are not merely "fringe" competitors, as National Regulatory Research Institute (NRRI) asserts
  - Cable and fixed wireless have relatively low entry and exit costs
  - Intermodal competition is here and growing, not "just around the corner"
  - Intermodal competitors are sufficiently advanced to discipline market incumbents
  - NRRI concedes that no cable or fixed wireless provider submitted any buyer or seller data for its study
- In spite of challenging economic environment, companies have been investing and expanding service (report includes examples of investment since 2008)

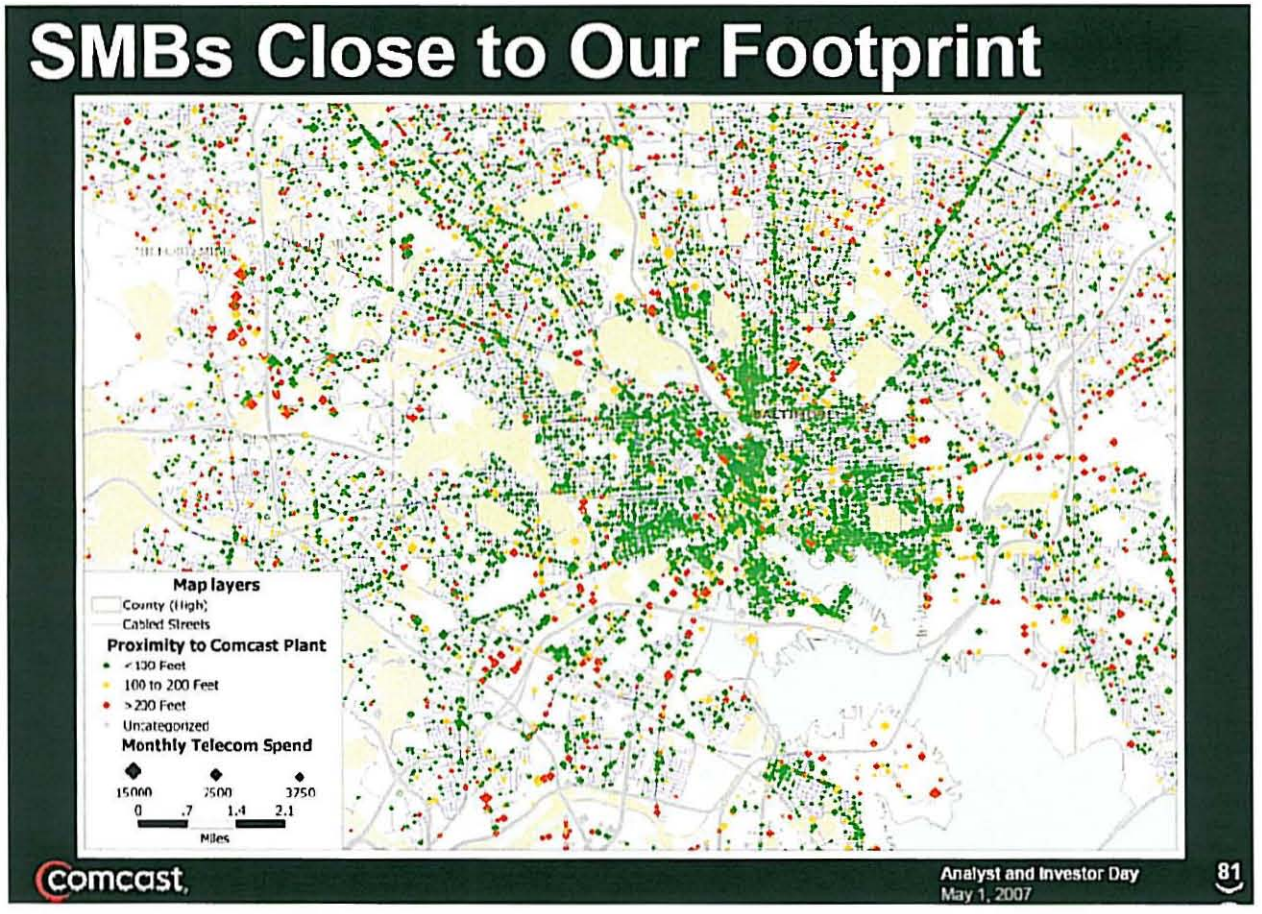
Cable Competition Leverages Near-Ubiquitous Plant

Cable companies are increasingly using their near-ubiquitous networks to provide business customers a range of services that compete with special access

- The top 5 U.S. cable operators:
  - Are investing several billion to expand business services
  - Serve nearly one million business customers and are targeting penetration of 20%-25% in the next few years
  - Already report annual revenue of approximately $3 billion, with projected growth of at least 15%-20% per year
- Individual cable operator examples:
  - Cox is approaching $1 billion in annual business revenues and estimated that it now controls as much as 25% of the small and medium enterprise (SME) market in its footprint
  - Comcast sees five million SMEs within its footprint representing a $12-$15 billion opportunity and is targeting 20%-25% share
- Cable deployment of DOCSIS 3.0 will greatly enhance cable bandwidth offerings
  - Provides up to 100 Mbps downstream and 30 Mbps upstream
  - It is currently being deployed and will be available throughout the U.S. by 2013

Cable Examples Illustrate Proximity of Networks to Customers

Comcast Investor Presentation Shows Near-Ubiquity of Plant



Cable Statements Regarding Proximity to Business Customers

Cablevision

"…600,000 businesses inside our footprint…"

Comcast

"…5 million small- and medium- sized business that we think are in our footprint…"

Time Warner Cable

"…2 million business customers that fall within a quarter mile of each side of our plant..."

Charter

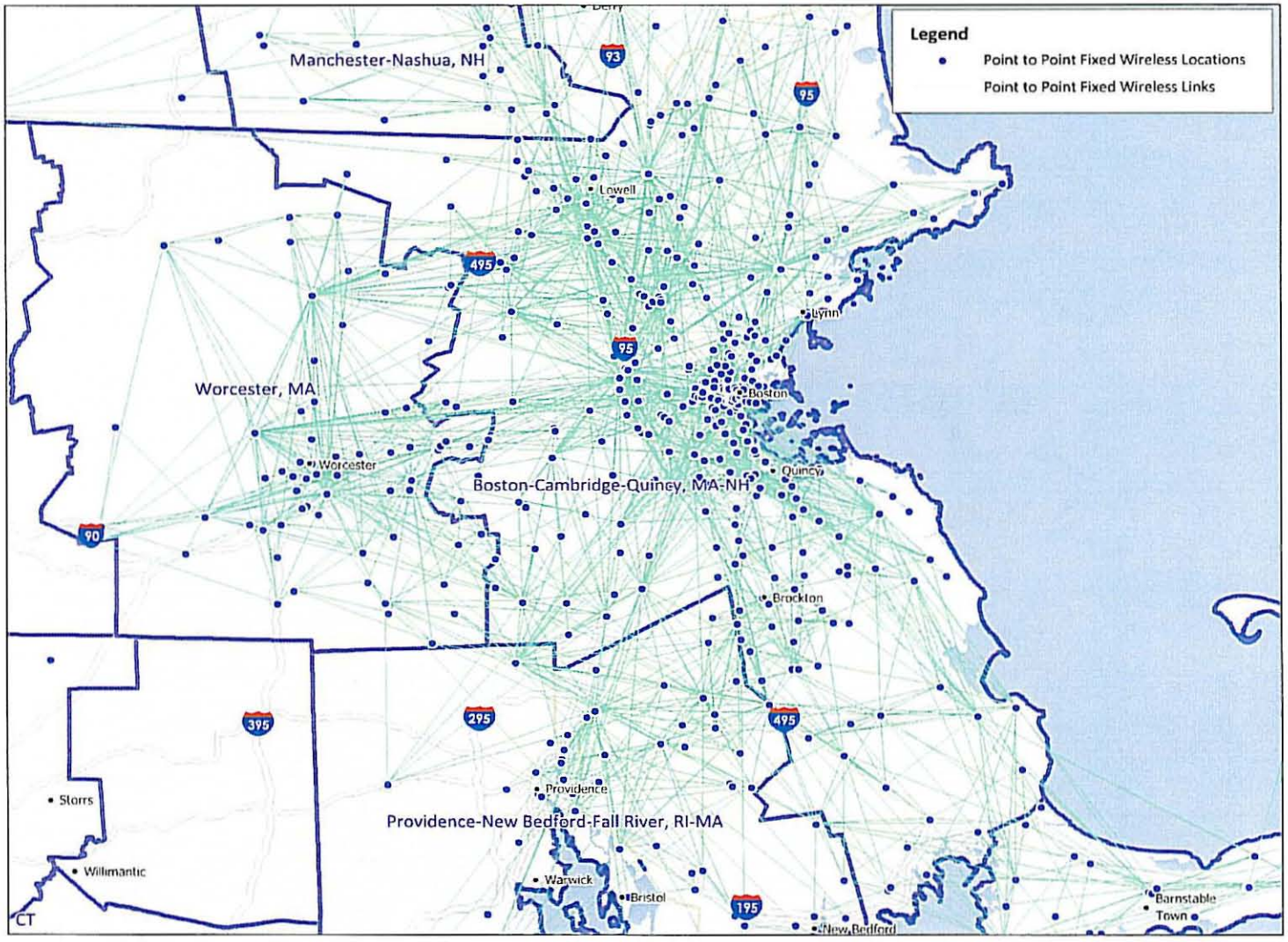
"…$5.5 billion of business Telecom spend within 600 feet of our network…"

Fixed Wireless Is an Attractive Substitute for ILEC Special Access

More than a dozen fixed wireless providers offer business, carrier, and wholesale services, ranging from DS-1 to Gigabit Ethernet to optical speeds, in areas throughout the country, including most of the top 50 MSAs

- Fixed wireless providers have acquired spectrum across the United States
  - FiberTower holds spectrum that covers 99% of the United States
  - Nextlink's fixed wireless spectrum covers "95% of the population in 81 of the top markets"
  - Clearwire "has 100 MHz or more of optimal 4G spectrum in most markets across the U.S."
- Fixed wireless providers are rapidly adding new customers and locations
  - FiberTower provides service in the top 77 metro areas as well as many "suburban and rural markets"; as of 1Q2009, FiberTower increased the number of installed sites by 19 percent and the number of customer billing locations by 39% over the previous year
  - Clearwire states it its on track to "extend [its] wireless 4G network to potentially cover as many as 120 million people…across 80 cities…by the end of 2010."
- Fixed wireless providers assert they can deploy quickly and efficiently
  - FiberTower: "[y]ou can literally cover a hundred miles and you're talking less than $100,000 in equipment rather than millions to put in fiber."
  - Lemko: introduced fixed wireless technology that it claims reduces operational expenses "by 65%" and has a "breakeven end user density [of] one user per two square miles."

Map Shows Breadth of Fixed Wireless Links in the Boston MSA



Source: Nicholas Vantzelfde of Communications Media Advisors.

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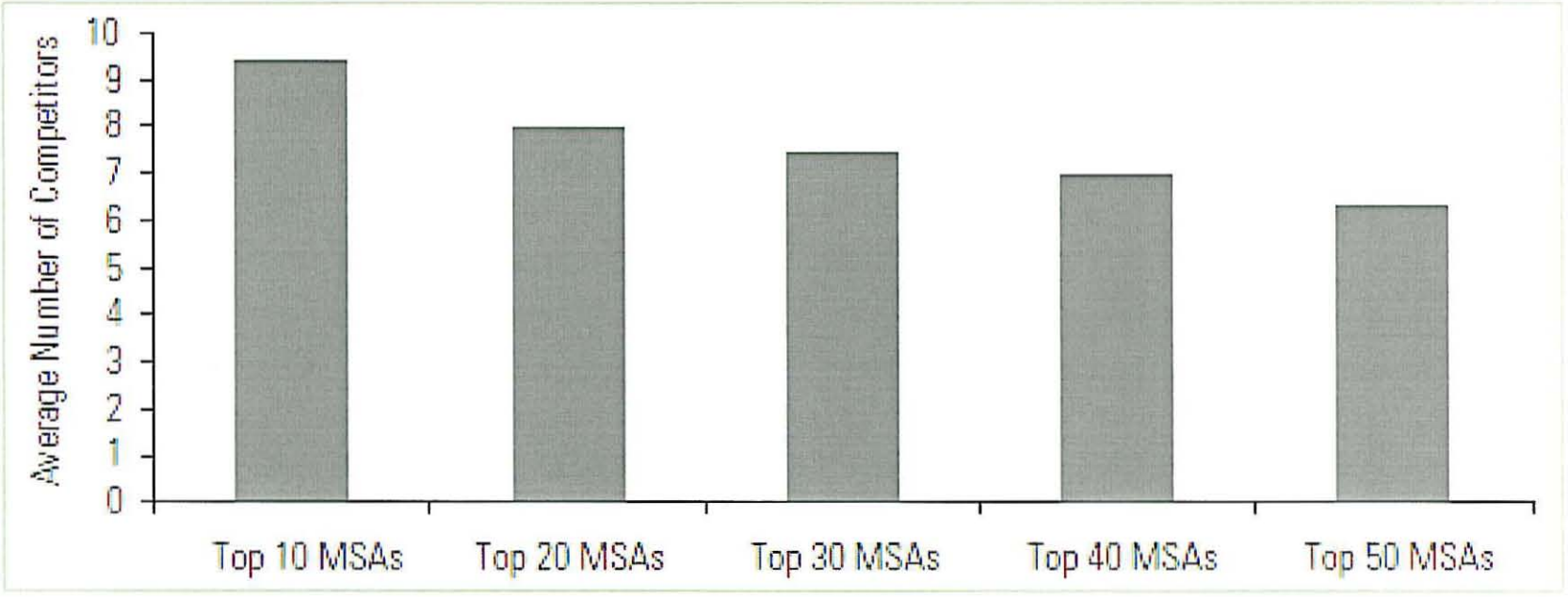
Competitive Fiber Providers Continue to Expand Their Footprints

Over the past two decades, competing providers have invested heavily to deploy fiber networks to virtually all areas where demand is concentrated, and are capable of providing service to every type of customer and at every level of capacity

- In an investment setting, competing carriers focus on the "reach" of their network and not on the number of buildings to which they are actually connected
  - Level 3 told investors in May 2009 that there are "[o]ver 100,000 enterprise buildings within 500 ft of [Level 3's] US network"
  - tw telecom in May 2009 estimated that of the approximately 1.9 million "target" businesses in the cities it serves, nearly one million are within one mile of tw telecom's fiber
- Competitors are willing and able to extend their networks as demand warrants, and have been doing so despite the worsening economy; selected examples follow:
  - Level 3 (May 2009) announced the expansion of operations in upstate New York
  - AboveNet (Jan. 2009) deployed a fiber network in Austin, Texas
  - FiberLight (Sept. 2008) began building a fiber network] from Chantilly to Culpeper, Virginia
  - tw telecom (Dec. 2008) "[has] been connecting an average of about 1,000 enterprise buildings to our network each year and we will continue to add … in 2009."
  - Zayo Bandwidth (2008) added over 600 buildings via fiber laterals to its network.

Chart Shows *Known* Competitive Fiber Providers* in Top 50 MSAs

There is an average of six known competitive fiber providers in the top 50 MSAs with a range of between one and 14 alternative providers per MSA



* *Excludes ILEC, Cable and Fixed Wireless*

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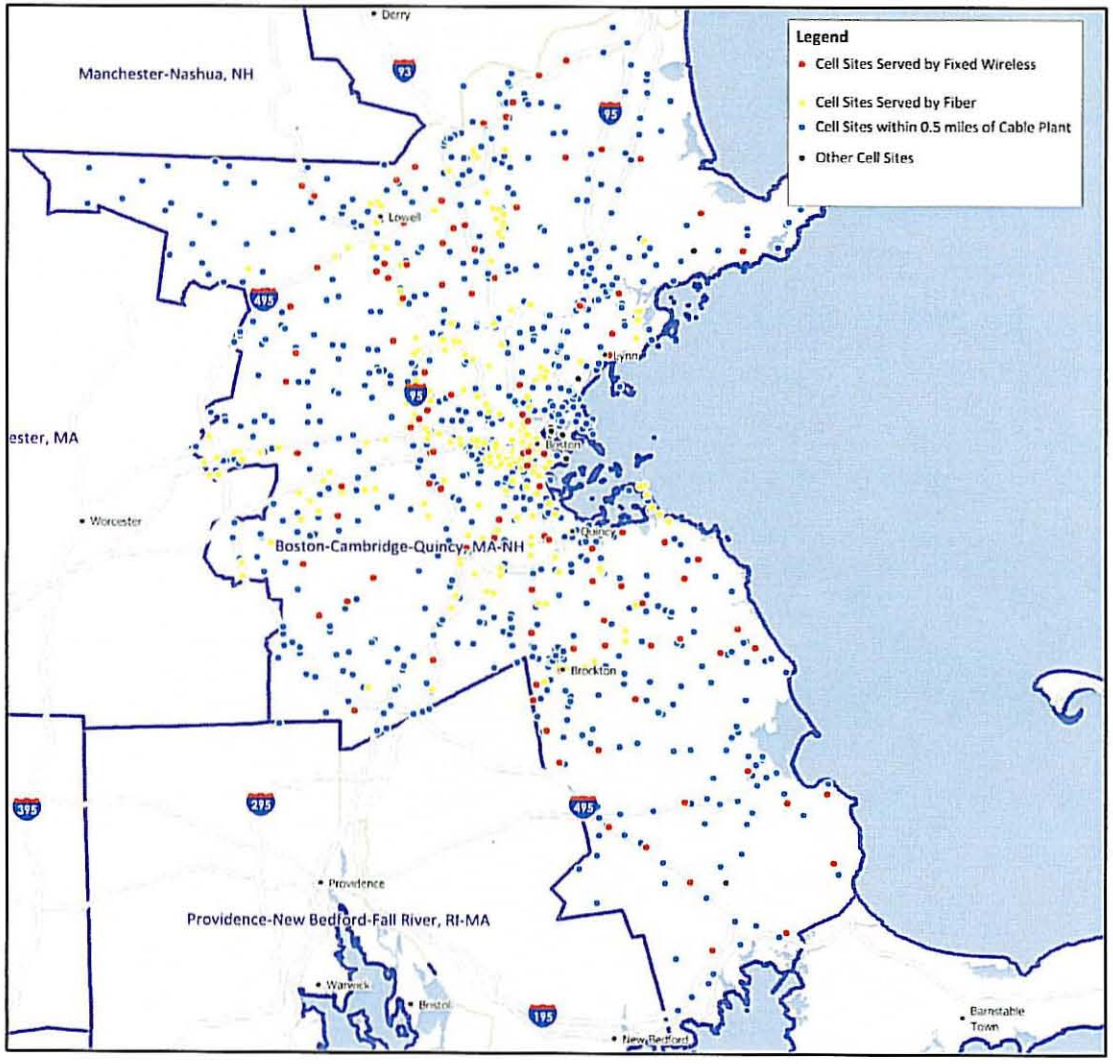
Competition for Wireless Backhaul Is Particularly Robust

The dramatic growth in wireless voice and data connections and usage has outstripped the capacity of traditional time division multiplexing or copper facilities

- Exploding demand for mobile broadband means new investment in higher capacity facilities is necessary, creating a multibillion dollar opportunity for all suppliers
  - Raymond James analysts have estimated the current size of the U.S. backhaul services market to be approximately $3 billion annually, and that it could reach $8 billion to $10 billion in the next two-to-four years
  - Yankee Group projects bandwidth demand for wireless broadband is projected to grow at a compounded annual rate of 130 percent from 2008 through 2012
- Fixed wireless, via third-party or self-supply, is an option for backhaul
  - Fixed wireless is not more prevalent in the United States [compared to Europe] because, as Sprint's former Chief Technology Officer noted, "relatively abundant and inexpensive T-1 [special access] lines" have provided an attractive alternative here
  - Clearwire has over 18,000 cell sites under development for its broadband network and plans to rely on "almost exclusively microwave backhaul"
  - FiberTower, through its partnership and master lease agreements, has the ability to access over 100,000 towers nationwide—almost half of the total 242,000 U.S. cell sites.
- Competitive fiber and cable providers are also actively targeting wireless carriers

Map Shows Most Cell Sites Near Cable, Fiber, and Fixed Wireless Plant



When each of the various alternatives is taken into account, the overwhelming majority of cell sites can readily be served using competing facilities. For example, in the Boston MSA:

- 66% of cell sites are within one-tenth of a mile of cable plant
- 87% of cell sites are within a half of a mile of cable plant
- 83% are within a half of a mile of fiber
- 18% are served by point-to-point wireless backhaul circuits

Source: Nicholas Vantzelfde of Communications Media Advisors.

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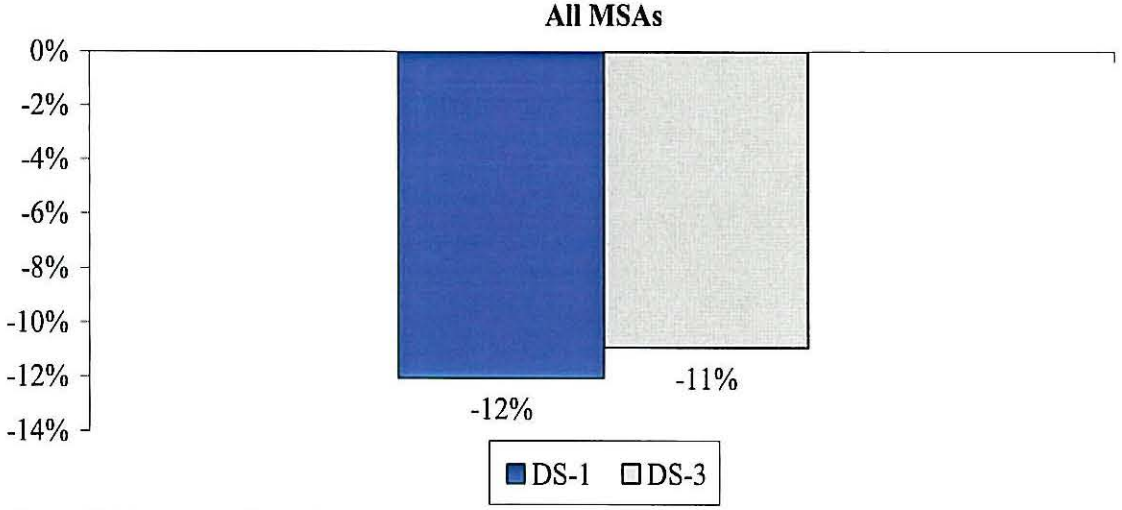
Special Access Prices Are Declining

Figure 7. GAO Data Show Declines in Average Revenue for Channel Terminations

Comparison of 2005 and Pre-Flex Means in Nominal Dollars



Source: GAO Report at Appendix II, Table 7.

More recent data in our report show prices continue to fall

From 2005-2008, two large ILECs' average revenue per unit for special access, adjusted for inflation, fell:

- between -11% and -23% for DS-1 service
- between -13% and -19% for DS-3 service

Re-Regulation Proponents' Rhetoric Does not Square with the Facts

- There is *no* market failure and the market is *not* broken
  - Special access is only one part of broader high-capacity services market
  - High-capacity services show characteristics of a dynamic, functioning market
    - Growing demand, expanding competition, and declining prices
    - Continued investment and innovation
- Special access is *not* generating 100 percent plus profit margins
  - Figures are massive distortions based on outdated regulatory cost allocations
  - "ARMIS" cost allocations are known to make special access profits appear inflated
  - Claims have been repeatedly discredited by third parties (FCC, NRRI)
- Special access price controls would *not* provide economic or consumer benefits
  - Special access prices continue to fall, broadband industry invests over $60 billion annually
  - Consumers already reaping benefits, e.g., wireless broadband and new video services
- Regulators have *not* eliminated protections for consumers and competitors
  - All interstate special access is subject to Title II "just and reasonable" requirements
  - Approximately two-thirds of MSAs remain under price caps (per GAO)
  - Almost all non-MSAs remain under price cap or rate of return regulation